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INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 AF-08 ARA-06 CIAE-00

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E.O. 11652: N/A

TAGS: PARM, CCD

SUBJECT: CCD - ENMOD WORKING GROUP MEETING, JULY 23, 1976

1. SUMMARY: IN BRIEF CONSIDERATION OF ARTICLE V (TO
BE CONTINUED JULY 26), FRG AND SWEDEN DEFENDED
NETHERLANDS-SWEDEN PROPOSAL AND JAPAN ANSWERED QUESTION
CONCERNING ADVISORY BODY'S RELATIONSHIP TO SUBSEQUENT
REVIEW BY SECURITY COUNCIL. US REP INDICATED WE WOULD HAVE
GREAT CONCERN OVER GIVING ADVISORY BODY
BINDING AUTHORITY TO CONSTRUE TREATY IN LEGAL SENSE, OR
TO REQUIRE STATES PARTY TO PROVIDE INFORMATION. DEPOSITORY
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ROLE OF UNSYG WAS AGREED TO BY CONSENSUS, AS WAS UNLIMITED

DURATION OF CONVENTION (ARTICLE VII). NUMBER OF STATES REQUIRED FOR ENTRY INTO FORCE OF CONVENTION AND SUBSEQUENT AMENDMENTS REMAIN UNRESOLVED, AS DO UK PROPOSALS REQUIRING MULTIPLE SPONSORSHIP FOR AMENDMENTS AND PROVIDING FOR REVIEW CONFERENCES. END SUMMARY

2. FRG REP (SCHLAICH) PRAISED THE NETHERLANDS-SWEDEN PROPOSAL FOR ARTICLE V, DECLARING THAT DRAWING CONCLUSIONS AND MAKING POLITICAL JUDGMENTS ARE NOT ENVISAGED AS FUNCTIONS OF THE CONSULTATIVE COMMISSION, WHICH WOULD BE A FACT-FINDING RATHER THAN POLITICAL BODY, AND WHICH WOULD SUBMIT A FACT-FINDING REPORT AFTER CONSIDERATION OF A COMPLAINT. HE SAID THAT THE CONSULTATIVE COMMISSION WOULD BE STRUCTURED SO AS TO HAVE GEOGRAPHICAL BALANCE, WHICH WOULD BE MUCH MORE DIFFICULT IF THE ADVISORY BODY WERE OPEN-ENDED. SCHLAICH STATED THAT PERMANENCE OF CONSULTATIVE COMMISSION WOULD ALSO BE AN ADVANTAGE, BECAUSE AN AD HOC BODY WOULD NOT BE ABLE TO REACT QUICKLY ENOUGH WHEN IT RECEIVED A COMPLAINT.

3. SWEDISH REP (HAMILTON) DISCUSSED THE ADVANTAGES OF THE NETHERLANDS-SWEDEN PROPOSAL OVER THE JAPANESE ONE. HE DOUBTED THAT A ROSTER OF EXPERTS WOULD CONTAIN THE RIGHT INDIVIDUALS FOR A PARTICULAR INVESTIGATION, AND ALTHOUGH THE UNSYG COULD ASK FOR ADDITIONAL NOMINATIONS FROM STATES PARTY THIS WOULD BE A MATTER FOR DELICATE JUDGMENT. THE LIMITED COMMITTEE OF EXPERTS ENVISIONED BY JAPAN WOULD BE BETTER THAN THE OPEN-ENDED ONE WHICH THE USSR FAVORS, BUT BOTH WOULD BE INFLEXIBLE IN SELECTING EXPERTS FROM THE PRIVATE SECTOR AND FROM INTERNATIONAL ORGANIZATIONS, WHO MIGHT BE NEEDED IN PARTICULAR CASES. ON THE OTHER HAND, THE NETHERLANDS-SWEDEN PROPOSAL FOR A CONSULTATIVE COMMISSION WOULD PERMIT A TAILOR-MADE SELECTION OF EXPERTS BY THE COMMISSION, SPECIFICALLY KEYED TO THE PARTICULAR PROBLEM UNDER INVESTIGATION.

4. HAMILTON DECLARED THAT A CONSULTATIVE COMMISSION WOULD BE AN EXCELLENT BODY TO DISCUSS AND INTERPRET THE CONVENTION, WHEN SO REQUESTED BY A STATE PARTY; AN EXPERTS GROUP COULD NOT DO THIS. FURTHER, HE SAID, A CONSULTATIVE COMMISSION LIMITED OFFICIAL USE

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WOULD HAVE GREATER STANDING THAN A COMMITTEE OF EXPERTS, AND THUS WOULD BE IN A BETTER POSITION TO OBTAIN INFORMATION AND THE COOPERATION OF PARTIES.

5. US REP (MARTIN) STATED THAT USG IS FLEXIBLE ONLY WITH RESPECT TO ESTABLISHING AN INTERMEDIATE FACT-FINDING BODY, THAT HE HAS NO INSTRUCTIONS TO GO FURTHER, AND THAT A BODY WITH ANY POLITICAL OR LEGAL POWERS WOULD PROBABLY GIVE THE

USG A GREAT DEAL OF CONCERN. INTERPRETATION OF THE CONVENTION IS A POLITICAL FUNCTION, AND HE DOUBTED THE US WOULD AGREE TO LEAVE THIS TO A RESTRICTED GROUP OF PARTIES. WHETHER A STATE PARTY WOULD FURNISH INFORMATION TO AN INTERMEDIATE BODY WOULD BE A POLITICAL DECISION; THE US WOULD HAVE PROBLEMS WITH GIVING AN INTERMEDIATE BODY A LEGAL RIGHT TO "SUBPOENA" INFORMATION, AND THUS, IN THIS CONTEXT, A CONSULTATIVE COMMISSION WOULD HAVE NO GREATER AUTHORITY THAN A COMMITTEE OF EXPERTS.

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6. JAPANESE REP (OGISO), IN RESPONSE TO AN EGYPTIAN QUESTION, EXPLAINED THAT THE FACT-FINDING CARRIED OUT BY

A COMMITTEE OF EXPERTS WOULD BE A SERVICE TO A PARTY WHO HAS A COMPLAINT ABOUT THE ACTIONS OF ANOTHER PARTY. THE COMPLAINANT MAY LACK TECHNICAL EXPERTISE, BUT THE COMMITTEE OF EXPERTS WOULD BE THE INTERNATIONAL BODY IN A POSITION TO OFFER FACT-FINDING AND INFORMATIONAL SERVICES, WHICH WOULD ASSIST THE STATE IN DECIDING WHETHER OR NOT TO PROCEED TO THE SURITY COUNCIL. THE FACT-FINDING ROLE OF THE COMMITTEE OF EXPERTS WOULD IN NO WAY LIMIT THE POWER OF THE SECURITY COUNCIL PROVIDED FOR BY THE UN CHARTER.

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7. DEPOSITARY ROLE OF THE UNSYG WAS AGREED TO BY CONSENSUS; FOURTEEN REPS (INCLUDING BOTH CO-SPONSORS) SPOKE IN FAVOR OF IT AND NONE AGAINST. SUBJECT TO FORMAL AGREEMENT IN THE NEXT READING, THE CORRESPONDING BLANKS IN ARTICLES VI, VIII, AND IX ARE TO BE FILLED AS FOLLOWS:

A. IN PARAGRAPH VI,1 INSERT THE WORDS "THE DEPOSITARY WHO," STRIKING OUT THE EXISTING WORD "WHICH."

B. IN THE FIRST BLANK IN PARAGRAPH VI,2 INSERT THE WORDS "THE DEPOSITARY."

C. IN PARAGRAPH VIII,2 INSERT THE WORDS "THE SECRETARY-GENERAL OF THE UNITED NATIONS."

D. IN PARAGRAPH VIII, 5 INSERT THE WORD "DEPOSITARY."

E. THE BLANK IN PARAGRAPH VIII, 6 WAS NOT SPECIFICALLY DISCUSSED, BUT WE PRESUME THAT THE WORDS "THE DEPOSITARY" SHOULD BE INSERTED.

F. IN ARTICLE IX INSERT THE WORDS "THE DEPOSITARY WHO", STRIKING OUT THE EXISTING WORD "WHICH."

8. ARTICLE VII (THAT THE CONVENTION'S DURATION SHALL BE UNLIMITED) WAS AGREED TO BY CONSENSUS.

9. ON NUMBER OF STATES REQUIRED FOR CONVENTION'S ENTRY INTO FORCE, THERE WERE NO SUGGESTIONS MADE; BLANK IN PARAGRAPH VIII, 3 REMAINS UNFILLED.

10. THERE WAS CONSIDERABLE DISCUSSION OF HOW MANY ADHERENCES WOULD BE REQUIRED FOR ENTRY INTO FORCE OF AN AMENDMENT (FOR THOSE ACCEPTING IT). US REP MARTIN) SUGGESTED TWO POSSIBILITIES: A MAJORITY OF STATES PARTY, OR TWO-THIRDS OF STATES PARTY. FOUR REPS (ARGENTINA, YUGOSLAVIA, BRAZIL, EGYPT) SPOKE IN FAVOR OF A MAJORITY; SIX REPS (FRG, NIGERIA, SWEDEN, ITALY, UK, JAPAN) FAVORED TWO-THIRDS. (CANADA SAID TWO-THIRDS WAS PROBABLY TOO MANY, BUT DID NOT SPECIFICALLY SPEAK IN FAVOR OF USING A MAJORITY.) IN CONNECTION WITH AN AMENDMENT'S ENTRY INTO FORCE, NETHERLANDS REP (VAN DER KLAUW) ASKED A LEGAL QUESTION RELATING TO THE ILLUSTRATIVE LIST OF

EXAMPLES IN ARTICLE II (QUESTION DISCUSSED SEPTEL).

11. UK REP (TAYLOR) EXPLAINED UK PROPOSAL TO REQUIRE
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MULTIPLE SPONSORSHIP OF AMENDMENTS, SAYING THAT THEIR
ORIGINAL SUGGESTION HAD BEEN TEN STATES BUT THAT FIVE
MIGHT SERVE JUST AS WELL. TAYLOR STATED THAT THE PROPOSAL
STEMS FROM THE UK'S EXPERIENCE AS A DEPOSITARY GOVERNMENT,
AND THAT IT IS A BURDEN TO HAVE TO CIRCULATE FRIVOLOUS
AMENDMENTS TO ALL PARTIES. ONLY CANADA SUPPORTED THE UK
PROPOSAL; FIVE REPS OPPOSED IT (NIGERIA, ARGENTINA, BRAZIL,
EGYPT, JAPAN). NIGERIAN REP (CLARK) SUGGESTED REQUIRING
A PERIOD OF NOTICE DURING WHICH AMENDMENTS WOULD BE
CIRCULATED BEFORE BEING RAISED FORMALLY. US REP (MARTIN)
SAID THIS IDEA SEEMED PROMISING, AT FIRST GLANCE TO HIM
PERSONALLY, BUT THAT HE WOULD LIKE TO SEE SPECIFIC LANGUAGE.

12. DISCUSSION OF UK PROPOSAL ON REVIEW CONFERENCES WAS
POSTPONED UNTIL JULY 26. US REP (MARTIN) ANNOUNCED THAT
US HAS NO OBJECTION TO PRINCIPLE OF INCLUDING A REVIEW
CONFERENCE PROVISION.

13. NEXT ENMOD WORKING GROUP MEETING SCHEDULED FOR
JULY 26, 1976. ABRAMS

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